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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
MEDFORD DIVISION**

TAMIE RICHARDSON,

Plaintiff,

vs.

First Horizon Home Loan Corporation,

Defendants.

Case No. 10-03073

MOTIONS IN LIMINE

Comes now Defendant First Horizon Home Loan Corporation and submits the following
Motions in Limine:

1. MOTION TO EXCLUDE REFERENCE TO ALLEGED VIOLATIONS OF LAW AT SETTLEMENT.

Defendant moves to exclude Plaintiff from reference to alleged violations of RESPA with respect to certain disclosures regarding HUD 1, Good Faith Estimate, Truth In Lending Statement, etc. at settlement.

Those seem to implicate Sections 4 (12 U.S.C. § 2603) and 5 (12 U.S.C. § 2604) of RESPA. However, there is no private right of action for a violation of Section 5. *See* Stewart v. Mortg. Electronic Registration Systems, Inc., 2010 U.S. Dist. LEXIS 26442, 2010 WL 1054384 at *8 (D. Or. Feb. 18, 2010), (*citing* *Glover v. Fremont Inv. and Loan*, 2009 U.S. Dist. LEXIS 117890, 2009 WL

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2 5114001 at *5 (N.D.Cal. Dec. 18, 2009) and *Silvas v. GMAC Mortg.*, 2009 U.S. Dist. LEXIS 118854,
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4 2009 WL 4573234 at *11 (D. Ariz. Dec. 1, 2009)). Nor is there a private right of action for alleged
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6 violations of Section 4. *See Bloom, supra, Smith, supra, Velasquez, supra.*
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10 To the extent that Plaintiff wants to argue that these claims fall under Section 6 (12 U.S.C. §
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12 2605) or 8 (12 U.S.C. § 2607), those claims would be barred by the applicable statutes of limitation as
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14 well. The RESPA statute of limitations generally begins to run no later than the date of actual
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16 disclosure of actions constituting an alleged violation. *Meyer v. Ameriquest Mtg. Co.*, 342 F.3d 899,
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18 902 (9th Cir. 2003). That generally means when the loan closed and documents are signed. *Id., Bloom,*
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20 *supra.* Plaintiff obtained her loan in 2005, but did not file these proceedings until 2010.
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24 Section 8 is limited by a one year statute of limitations. *Vasconcellos v. Wells Fargo Home*
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26 *Loan Mortg., Inc.*, 2010 U.S. Dist. LEXIS 98818, 11-12 (D. Or. Sept. 20, 2010), *Hogan v. NW Trust*
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28 *Servs.*, 2010 U.S. Dist. LEXIS 45597 (D. Or. May 6, 2010). Violations of Section 6 are barred by a
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30 three year statute of limitations. *Hogan, supra.* So the statute of limitation would have expired in either
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32 2006 or 2008. Thus, in either event any claims related to the closing of the loan are time barred.
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36 Plaintiff may want to argue that these time periods should be extended through the application
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38 of the doctrine of equitable tolling. This doctrine only applies where the plaintiff had neither actual nor
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40 constructive notice. *Johns v. Henderson*, 314 F.3d 409, 414 (9th Cir. 2002). It does not apply where
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42 nothing prevented the plaintiff from comparing the documents she was provided with the regulatory
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44 requirements to determine if the information provided complied with those requirements. *Gifford v.*
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46 *Bank of Am.*, 2010 U.S. Dist. LEXIS 83030, 10-11 (D. Or. July 9, 2010)(relying on *Hubbard v. Fidelity*
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48 *Fed. Bank*, 91 F.3d 75, 79 (9th Cir. 1996) and *Meyer, supra*)
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2 To the extent her claims regarding disclosures at closing are based on state law theories, those
3 theories are equally time barred. Fraud, Negligence and breach of fiduciary duty, covenant of good
4 faith and similar claims are subject to a two year statute of limitations. Or. Rev. Stat. § 12.110.
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10 **2. MOTION TO EXCLUDE REFERENCE TO ALLEGED UNJUST ENRICHMENT.**
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12 Defendant moves to exclude Plaintiff from reference to the allegation that First Horizon has
13 been unjustly enriched as this theory fails as a matter of law, as discussed in Defendant's Memorandum
14 in Support of Summary Judgment, Docket #.
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19 **3. MOTION TO EXCLUDE REFERENCE TO FRAUD UNLESS SUPPORTED BY**
20 **SPECIFIC FACTS.**
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22 Defendant moves to exclude Plaintiff from referring to or otherwise using testimony to allege
23 Fraud, unless Plaintiff can point to specific facts to support such allegations.
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28 **4. MOTION TO TAKE JUDICIAL NOTICE**
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30 Defendant moves that this Court take judicial notice of all pleadings submitted by Defendant.
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34 **5. FIFTH MOTION IN LIMINE**
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36 Defendant moves to exclude Plaintiff from references to any issues not raised in her Complaint.
37 In order for Defendant to prepare for trial the issues must be limited to the specific issues raised by
38 Plaintiff.
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42 **6. MOTION TO EXCLUDE REFERENCE TO AN INVALID LIEN**
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44 Defendant moves to exclude Plaintiff from referring to other otherwise inferring that there is no valid
45 lien on the subject property. Defendant refers to its Memorandum in Support of Summary Judgment in
46 support of this motion.
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50 **7. MOTION TO EXCLUDE REFERENCE TO ALLEGED CRIMINAL CONDUCT OR**
51 **CONSPIRACY.**
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3 Plaintiff in its Complaint makes reference to the term "Criminal Connivance" and implies broad
4 ranging conspiracies. There is no evidence that any of the conduct alleged by Plaintiff is even
5 close to criminal conduct and the use of this term or similar terms can only serve the purpose of
6 prejudicing the finder of facts. Similarly, the allegations made do not even remotely rise to the
7 level of conspiracy, even if they can be taken at face value, which they should not. They are
8 irrelevant and again would serve merely to prejudice the fact finder. Therefore any reference to
9 criminal conduct or conspiracy should be excluded.
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19 **8. MOTION TO EXCLUDE REFERENCE TO ANY MATTERS TO BE DECIDED AS A**
20 **MATTER OF LAW.**
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22 Plaintiff's pleadings do not distinguish between disputed facts and matters of law. Defendant
23 has provided a memorandum of law in support of its motion for summary judgment. Defendant
24 therefore requests to have excluded any matters that can be decided as a matter of law as referenced in
25 Defendant's memorandum.
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37 DATED October 21, 2010
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39 McCarthy & Holthus, LLP
40

41 /s/ Holger Uhl
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43 By _____
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45 Holger Uhl, Of the Firm
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47 Attorneys for First Horizon Home Loan
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 28, 2010, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing:

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Additionally, a copy of the foregoing was served on the following parties by first class mail, postage prepaid, addressed to:

Tamie Richardson
746 Bailey Drive
Grants Pass, OR 97527

/s/ Holger Uhl

Holger Uhl